

Senate Bill 380

By: Senators Kemp of the 46th, Hudgens of the 47th, Bulloch of the 11th, Tolleson of the 20th, Cagle of the 49th and others

AS PASSED

AN ACT

To amend Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to agricultural commodities promotion, so as to create the Agricultural Commodity Commission for Equines; to define certain terms; to provide for supervision; to provide for the commission and its members; to provide for officers and quorums; to provide for funds of the commission; to provide certain immunity; to provide for cooperation; to provide for hearings; to provide for marketing orders; to provide for amendments; to provide for administration of funds; to provide an exception; to provide for related matters; to provide a contingent effective date; to provide for contingent automatic repeal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to agricultural commodities promotion, is amended by striking Code Section 2-8-10, relating to nonapplicability of Article 2 of said chapter, and inserting in lieu thereof the following:

"2-8-10.

This article shall not apply to the Agricultural Commodity Commission for Peanuts provided for in Article 3 of this chapter, except as provided in Code Section 2-8-13; nor shall this article apply to the Agricultural Commodity Commission for Equines provided for in Article 4 of this chapter."

SECTION 2.

Said chapter is further amended by adding a new article to read as follows:

"ARTICLE 5

2-8-120.

This article shall apply only to the Agricultural Commodities Commission for Equines.

2-8-121.

As used in this article, the term:

(1) 'Advertising and sales promotion' means, in addition to the ordinarily accepted meaning thereof, trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the normal flow of equines to market and may include the presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the marketing of any equines.

(2) 'Commission' means the Agricultural Commodity Commission for Equines created under this article.

(3) 'Equine' means any member of the Equidae family, including horses, mules, hinnies, and asses.

(4) 'Person' means an individual, firm, corporation, association, or any other business unit or any combination thereof and includes any state agency which engages in any of the commercial activities regulated pursuant to this article.

(5) 'Producer' means any person who owns one or more equines or is engaged within this state in the business of buying, selling, boarding, holding, training, breeding, riding, pulling vehicles with, or otherwise utilizing equines for similar purposes.

2-8-122.

The Commissioner shall be authorized to exercise supervisory jurisdiction over the administration and enforcement of this article. In the performance of this duty, the Commissioner is authorized to utilize the personnel and facilities of the department.

2-8-123.

There is created the Agricultural Commodity Commission for Equines.

2-8-124.

(a) The commission shall be composed of:

(1) The Commissioner of Agriculture, ex officio;

- (2) The president of the Georgia Farm Bureau, ex officio;
 - (3) One member elected by the Senate Agriculture and Consumer Affairs Committee with a quorum present and a majority of those present concurring, who shall be a producer and shall not be a member of the General Assembly;
 - (4) One member elected by the House of Representatives Committee on Agriculture and Consumer Affairs with a quorum present and a majority of those present concurring, who shall be a producer and shall not be a member of the General Assembly; and
 - (5) Five additional members, all of whom shall be appointed by the members of the commission specified in paragraphs (1) through (4) of this subsection. At least four of such appointees shall be producers.
- (b) The initial two members elected by the agriculture and consumer affairs committees of the General Assembly shall be elected and qualification to take office for a term beginning on January 1, 2007, and ending upon the election of their successors during the regular 2009 session of the General Assembly. Their successors shall be elected during the 2009 regular session of the General Assembly; and thereafter future successors shall be elected during each regular session of the General Assembly convening in odd-numbered years. Such members shall be selected so that one member is from the northern part of Georgia and one member is from the southern part. For purposes of this selection the northern part of Georgia shall be that area north of and including Richmond, McDuffie, Warren, Hancock, Baldwin, Jones, Bibb, Crawford, Upson, Talbot, and Muscogee counties; and the southern part shall be that area south of such counties. The chairpersons of the Senate and House committees shall by agreement determine which committee will choose the member from the northern part and which committee will choose the member from the southern part. Such members shall serve from the date of their election until their successors are elected and qualified.
- (c) For purposes of the appointment of additional members of the commission as provided in this Code section, a list of nominees shall be requested from producers of equines. Initial appointments shall be made for three members for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified and two members for a term of two years each from the effective date of their appointment and until their successors are appointed and qualified. Thereafter, successors shall be appointed for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified. Vacancies shall be filled by appointment in like manner, for the unexpired term, except that vacancies in the

office of a member elected by a legislative committee shall be filled for the unexpired term by the legislative committee which made the previous appointment. Any appointive member shall be eligible for reappointment.

(d)(1) The members who are state officers shall be compensated as provided by law. Each such member shall be reimbursed by his or her respective department or from the funds of the commission for actual and necessary expenses incurred in the performance of his or her duties. Each such member who is a state officer may designate a representative of his or her department to act for the officer in performing any duties under this article.

(2) The two members elected by the agriculture and consumer affairs committees of the General Assembly, as provided by subsection (a) of this Code section, shall be entitled to receive, for attending meetings of the commission, the same expenses and travel allowances which members of the General Assembly receive for attending meetings of legislative interim committees. Such expenses and allowances shall be paid from funds appropriated or otherwise available to the legislative branch of state government.

(3) The appointive members of the commission shall receive compensation and reimbursement of expenses as shall be provided by the commission, and such funds shall be payable from the funds of the commission.

(e) It shall be the duty of the Commissioner to certify to the Secretary of State the membership of the commission and each change in membership as the same occurs.

(f) The commission is authorized to appoint advisory boards, special committees, and individuals, including technical and clerical personnel, to advise, aid, and assist the commission in the performance of its duties. Compensation for such services shall be fixed by the commission and may be paid from the funds of the commission. The Attorney General shall represent the commission in legal matters and shall be the attorney for the commission. If the Attorney General determines that outside legal counsel is necessary or desirable in connection with any legal matter of the commission, he or she shall so inform the commission and, upon approval of the commission, shall employ such outside counsel. Compensation for such outside counsel shall be agreed upon between such counsel and the Attorney General, subject to the approval of the commission. Such compensation shall be paid from the funds of the commission. Neither Code Section 16-10-9 nor any other law shall prohibit or be applicable to the employment of such counsel.

(g) Any other provision of this article to the contrary notwithstanding, a member of any federation or organization of producers shall be eligible to be appointed as a member of the

commission with respect to any equine produced by such federation or organization or handled by it for its members who produce it.

(h) The commission is authorized to accept donations, gifts, grants, revenue derived from the sale of special license plates as may be otherwise provided by law, and other funds or property and to use the same for commission purposes. The commission may exercise the powers and authority conferred by law upon corporations.

(i) The two members elected by the agriculture and consumer affairs committees of the General Assembly, as provided by subsection (a) of this Code section, as members of the commission shall be entitled to vote on matters pertaining to the organization of the commission and upon the selection and nomination of the appointive members of the commission. Such two members shall not be entitled to vote upon any matter pertaining to the policy provisions of the commission nor shall they be entitled to vote upon the expenditure of any funds of the commission.

(j) The commission shall continue as a public corporation and instrumentality of the State of Georgia until abolished by law.

2-8-125.

The commission, with its name annexed thereto, shall be a public corporation and an instrumentality of the State of Georgia. By that name, style, and title, the commission may contract and be contracted with, implead and be impleaded, and complain and defend in all courts. The commission shall name its chairperson and determine a quorum for the transaction of business. The commission shall assume the duties and exercise the authority provided in this article without further formality than that provided in this article. Each member of each the commission shall be a public officer and shall take an oath of office faithfully to perform his or her duties. Such oath shall be administered by the Commissioner or some other person qualified to administer oaths. The fact of a member's appointment shall be certified to the Secretary of State, who shall issue the appropriate commission under the seal of his or her office.

2-8-126.

The Commissioner is authorized and it shall be his or her duty to receive, collect, and disburse the funds of the commission qualifying and operating under this article. The Commissioner shall disburse funds of the commission only upon the written authorization of the commission.

2-8-127.

Funds received by the Commissioner under this article shall be held in trust for the commission. Such funds shall be deposited, accounted for, and disbursed in the same manner as the funds of this state but shall not be required to be deposited in the state treasury and appropriated therefrom as are other state funds. It is the express intent and purpose of this article to authorize the receipt, collection, and disbursement by the Commissioner of such funds as trust funds of the commission without complying with the requirement applicable to funds collected for the use and benefit of the state.

2-8-128.

Any person who handles funds under this article shall be bonded with good and sufficient surety in an amount determined by the Commissioner for the accounting of any and all funds coming into his or her hands.

2-8-129.

The members and employees of the commission and the Commissioner shall not be held responsible individually in any way whatsoever to any producer, distributor, or other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

2-8-130.

The Commissioner and the commission are authorized to confer with and to make any information obtained pursuant to this article available to the duly constituted governmental authorities of this state, of other states, of political subdivisions of this state or other states, and of the United States who, by reason of their duties, have legitimate concern with the subject and to cooperate with all such authorities for the purpose of obtaining administrative uniformity and achieving the objectives of this article.

2-8-131.

(a) The Commissioner, upon the approval and request of the commission, is authorized to issue, administer, and enforce the provisions of marketing orders.

(b)(1) Whenever the Commissioner has reason to believe that the issuance of a marketing order or amendments to an existing marketing order will tend to effectuate the declared policy of this article with respect to any equines, he or she shall, either upon his or her own motion, upon the motion of the commission, or upon the application of any producer, or any organization of such persons, give due notice of and an opportunity for a public hearing upon a proposed marketing order or amendments to an existing marketing order.

(2) Notice of any hearing called for such purpose shall be given by the Commissioner or the commission by publishing a notice of such hearing for a period of not less than five days in a newspaper of general circulation published in the capital of the state and in such other newspapers as the Commissioner may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice of hearing shall in all respects comply with the requirements of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(3) The hearing shall be public and all testimony shall be received under oath. A full and complete record of the proceedings at such hearing shall be made and maintained on file in the office of the Commissioner or the commission. The hearing shall, in all respects, be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The hearing may be conducted by the commission, by a member of the commission, or by the Commissioner, as may be designated by the commission in each instance, but no decision shall be made based on hearings conducted other than by the commission itself, at which a majority of the members thereof are present, until the members of the commission have been afforded an opportunity to review the hearing record. Where the commission conducts hearings, its recommendation shall be based on the findings reached after a review of the record of the hearing.

2-8-132.

If, upon the basis of the record of testimony and documentary evidence received at the hearing provided for in Code Section 2-8-131 and the facts officially noticed therein, the commission determines that the issuance of a marketing order or an amendment will tend to effectuate the intent and purpose of this article, it may recommend the promulgation of a marketing order containing any one or more of the following provisions, but no others:

- (1) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for equine grown in this state or for the prevention, modification, or removal of trade barriers which obstruct the normal flow of equines to market. The commission is authorized to prepare, issue, administer, and enforce plans for promoting the sale of equines, provided that any such plan shall be directed toward promoting and increasing the sale, use, and utilization of equines without reference to a particular producer or breed; and provided, further, that no advertising or sales promotion program shall be issued by the Commissioner or the commission which makes use of false or unwarranted claims on behalf of any equines or disparages the quality, value, sale, or use of any other agricultural commodity;
- (2) Provisions for carrying on research studies in promoting the production, marketing, sale, use and utilization, and improvement of equines or any combination thereof and for the expenditure of moneys for such purposes. In any research carried on under this paragraph, the Commissioner and the commission shall cooperate in selecting the research project or projects to be carried on from time to time. Such projects shall be carried out by postsecondary educational institutions or private organizations selected by the commission;
- (3) Provisions establishing or providing authority for establishing an educational program designed to acquaint producers or the general public about the equine industry and its associated issues.

2-8-133.

- (a)(1) Upon the recommendation of not less than three of the appointive members of the commission, the Commissioner or the commission may make effective minor amendments to a marketing order. The Commissioner or the commission may require a public hearing upon minor amendments if in the Commissioner's or the commission's opinion the substance of such minor amendments so warrants.
- (2) In making effective major amendments to a marketing order, the Commissioner or the commission shall follow the same procedures prescribed in this article for the institution of a marketing order. For the purpose of this article, a major amendment to a marketing order shall include, but shall not be limited to, any amendment which adds to or deletes from any such marketing order any of the following types of regulations or authorizations:

- (A) Authority for the establishment of plans for advertising and sales promotion of equines; or
 - (B) Authority for carrying out research studies in the production or distribution of equines.
- (3) Modification of any provisions of any marketing order in effect, for the purpose of clarifying the meaning or application of such provisions or of modifying administrative procedures for carrying out such provisions, are declared not to be a major amendment of such marketing order.
- (b) Upon the issuance of any order making effective a marketing order or any suspension, amendment, or termination thereof, a notice thereof shall be posted on a public bulletin board maintained at the Department of Agriculture; and a copy of such notice shall be published as the Commissioner or the commission may prescribe. No marketing order nor any suspension, amendment, or termination thereof shall become effective until the termination of a period of five days from the date of such posting and publication.
- (c) The Commissioner or the commission shall have the power, consistent with this article and in accordance with marketing orders and agreements made effective under this article, to establish such general rules and regulations for uniform application to all marketing orders issued pursuant to this article as may be necessary to facilitate the administration and enforcement of such marketing orders. The provisions of subsection (b) of this Code section relative to posting, publication, and time of taking effect shall be applicable to any such general rule or regulation established pursuant to this subsection and applicable to marketing orders generally. Such notice shall be furnished by the Commissioner or the commission for each marketing order in active operation.
- (d) Upon the recommendation of the commission, the Commissioner shall have the power, consistent with this article, to establish administrative rules and regulations for each marketing order issued and made effective as may be necessary to facilitate the supervision, administration, and enforcement of each such order. The provisions of subsection (b) of this Code section relative to posting, publication, mailing of notice, and time of taking effect shall be applicable to any such administrative rules and regulations.
- (e) Unless extended as provided in this Code section, all marketing orders issued under the authority of this article shall expire, terminate, and become of no force and effect at the expiration of three years from the date of the issuance of the original marketing order or, if such marketing order has been extended, at the expiration of three years after the date of any such extension.

2-8-134.

Marketing orders issued by the commission may be limited in their application by prescribing the marketing areas or portions of the state in which a particular order shall be effective, provided that no marketing order shall be issued by the commission unless it embraces all persons of a like class.

2-8-135.

(a) In the event that the commission has reason to believe that the administration of a marketing order will be facilitated or the attainment of the purposes and objectives of the marketing order will be promoted thereby, the commission is authorized to borrow money, with or without interest, to carry out any provision of any marketing order authorized by this article and may hypothecate anticipated funds due to the commission as otherwise provided by law and applicable to such respective provisions.

(b) In lieu of requiring advance deposits for defraying administrative or advertising and sales promotion expenses until such time as sufficient moneys are collected for such purposes from any funds due to the commission as otherwise provided by law, the Commissioner is authorized to receive and disburse for such purposes contributions made by producers or distributors. Neither the commission nor the Commissioner shall be held responsible for the repayment of such contributions, provided that whenever collections from the payment of any funds due to the commission and credited to the respective marketing order accounts are sufficient so to warrant, the commission shall recommend and the Commissioner shall repay contributions.

(c) Any moneys collected by the commission or the Commissioner pursuant to this article shall be deposited in a bank or other depository approved by the commission and shall be disbursed by the Commissioner only for the necessary expenses incurred by the commission and the Commissioner, as approved by the commission. Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the Commissioner. All such expenditures by the Commissioner shall be audited at least annually by the state auditor and a copy of such audit shall be delivered within 30 days after the completion thereof to the Governor, the Commissioner, and the commission. If ever the commission is abolished by law, any funds remaining in its hands at such time shall be used to pay the existing obligations of the commission and the expenses incurred in winding up the affairs of the commission. Any excess remaining shall

escheat to the state and shall be paid by the Commissioner into the state treasury as unclaimed trust funds.

(d) Moneys deposited by the Commissioner pursuant to this Code section which the commission determines are available for investment may be invested or reinvested by the Commissioner as provided for funds of this state or of any retirement system created by law, provided that all moneys invested shall be invested in those areas of production that will provide a return at the highest bank interest rate available. It shall be the duty of the commission annually to review these investments and determine that such investments comply with this Code section."

SECTION 3.

(a) This Act shall become effective on January 1, 2007, except as otherwise provided in subsection (b) of this section.

(b) If an amendment to the Constitution of the State of Georgia authorizing the dedication of revenue from sales of special license plates to agencies, funds, or nonprofit corporations designated by the General Assembly is not ratified at the general election in 2006, this Act shall be repealed in its entirety on January 1, 2007.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.